

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

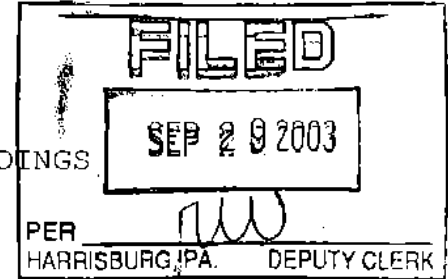
V.

MARI ANTHONY,
Defendant

Case 1:01-CR-336-04

TRANSCRIPT OF PROCEEDINGS

SENTENCING



BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: September 11, 2003

PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:

WILLIAM A. BEHE, Assistant United States Attorney
For - United States of America

SANFORD ALAN KREVSKY, Esquire
For - Defendant

Vicki L. Fox, RMR
Official Reporter

I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>Defendant's Witnesses</u>				
1. Mari Anthony				
By Mr. Krevsky	9	--	--	--
By Mr. Behe	--	21	--	--
2. Barry Daniels				
By Mr. Krevsky	34	--	38	--
By Mr. Behe	--	38	--	--
<u>Government's Witness</u>				
1. John Barrett				
By Mr. Behe	39	--	--	--
By Mr. Krevsky	--	41	--	--

Defendant's Witnesses

1. Mari Anthony
 By Mr. Krevsky
 By Mr. Behe

9 -- -- --
 -- 21 -- --

2. Barry Daniels
 By Mr. Krevsky
 By Mr. Behe

34 -- 38 --
 -- 38 -- --

Government's Witness

1. John Barrett
 By Mr. Behe
 By Mr. Krevsky

39 -- -- --
 -- 41 -- --

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I N D E X

Defendant's ExhibitIntroducedAdmitted

1. Letter from Kyle Rude to Sanford
Krevsky dated 8/15/03.

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1 THE COURT: Good morning, everyone.

2 MR. BEHE: Good morning, Your Honor.

3 THE COURT: The last time we were here in court,
4 or since then, I have addressed most of the objections
5 except one. I addressed the obstruction enhancement, the
6 amount of the drugs, the acceptance of responsibility, the
7 possession of a gun. And I did grant your motion on that
8 and took away the two level enhancement on the gun
9 possession I believe.

10 Criminal history calculation, the only thing that
11 was left was the allegation of incompetency of prior
12 counsel, the allegation being that he promised the defendant
13 that he would not receive anything more than a ten year
14 sentence. That amended petition was filed on September 8th.
15 There is a memo in support of the motion which I just now
16 received.

17 I am ready to address that issue concerning Mr.
18 Rude's representation. But not having read the memo, I will
19 permit counsel to make whatever argument that you have or
20 present any testimony. That is the only issue here today.

21 MR. KREVSky: If it please the Court, Your Honor,
22 Stanford Krevsky on behalf of Mr. Anthony. Your Honor, I
23 would like to present, if I could, testimony for my client
24 regarding the issue of counsel's representation.

25 I also would like with the Court's indulgence to

1 present a witness regarding what Mr. Chapman testified to
2 about the threat -- as a rebuttal witness on what
3 Mr. Chapman had said.

4 THE COURT: Who is the rebuttal witness? I want
5 the proffer.

6 MR. KREVSKY: Basically, that Mr. Chapman said
7 that my client threatened him in the fall of 2002. I will
8 present two witnesses on that regard.

9 Number one would be my client, who will testify
10 that in the fall of 2002, he was in jail. And also, Your
11 Honor, I would hope to bring a Mr. Mari (sic) into court.
12 His counsel is here. And Mr. Mari wanted his counsel here.
13 Mr. Perry, his attorney, was nice enough to come this
14 morning. And Mr. Daniels I believe will testify that
15 Mr. Chapman told him at the prison that he was never
16 threatened by my client.

17 THE COURT: You have got me confused. You
18 mentioned three different people now. Is Chapman here?

19 MR. KREVSKY: Chapman is the gentleman, Your
20 Honor, that testified --

21 THE COURT: The threat was made to whom?

22 MR. KREVSKY: Was made by my client to him.

23 THE COURT: To Chapman?

24 MR. KREVSKY: Yes.

25 THE COURT: Who is here to testify to the

1 contrary other than your client?

2 MR. KREVSKY: A gentleman by the name of Barry
3 Daniels. He was brought in from Dauphin County Prison. The
4 other person that I mentioned was his attorney. That is
5 Brian Perry.

6 THE COURT: Mr. Perry is here for what reason?

7 MR. KREVSKY: Because his client wanted him here.

8 THE COURT: All right. Mr. Behe?

9 MR. BEHE: I didn't catch the name of the
10 witness.

11 MR. KREVSKY: Barry Daniels.

12 MR. BEHE: Your Honor, with regards to the time
13 frame, I believe I have sent Agent Barrett down to get the
14 DEA-6 of the interview of Mr. Chapman.

15 As Mr. Krevsky will recall, at the conclusion of
16 the proceedings, Mr. Chapman's statement about when he
17 thought the time frame was was incorrect, and Mr. Chapman
18 corrected that by saying whenever it was, it was after Mr.
19 Smith was in prison, which would have been at the end of
20 October. The time frame I believe that he testified to at
21 trial and in previous reports to DEA when he interviewed him
22 about it would have been into the early part of the
23 following year, either January or I believe it was February.

24 THE COURT: Can we get the years we are talking
25 about?

1 MR. BEHE: Pardon me?

2 THE COURT: May we have the years you are talking
3 about for the record?

4 MR. BEHE: I am trying to recall what year it was
5 that Mr. Smith was incarcerated. It was October of I
6 believe it was 2001. I hope I am not mistaken. That is
7 when he was arrested for the sales to Chapman. It would
8 have been into 2002 that the threat occurred from this
9 defendant to Mr. Chapman.

10 THE COURT: You are saying that it happened in
11 the fall of 2002?

12 MR. BEHE: No. Mr. Krevsky was using the
13 appropriate type of cross-examination, telling him exactly
14 when it was, when it would have occurred. Mr. Chapman said
15 he thought it was sometime in the fall.

16 However on redirect, I asked him do you remember
17 exactly when it was? No. Would it have been within a week
18 or so of when you reported the incident? He said yes.

19 After that, I told Mr. Krevsky he reported it to
20 us in either January or February. So it couldn't have been
21 in the fall of the year. I have sent Agent Barrett down to
22 get the report so we can have some historical context to it.

23 So if Mr. Anthony says he was in prison, I don't
24 think that is going to affect the matter at all.

25 With regard to the other inmate, I don't have any

Anthony - Direct

8

1 idea what he is going to say other than what Mr. Krevsky has
2 related today.

3 THE COURT: Okay. Let's go with the Rude issue
4 and reserve the Chapman issue a second.

5 MR. KREVSKY: Thank you, Your Honor. If it
6 please the Court, Your Honor, first of all, I would just
7 draw the Court's attention to the allegations that we have
8 made. I have attached a letter -- sent a letter to the
9 Court.

10 THE COURT: I have it.

11 MR. KREVSKY: Thank you, Your Honor. I also gave
12 a copy of the letter to Mr. Behe. I would call my client
13 Mari Anthony.

14 THE COURT: What is he taking up to the bench?

15 MR. KREVSKY: They are his notes, Your Honor.

16 THE COURT: Do you want to look at them,
17 Mr. Behe?

18 MR. BEHE: I would like to. I prefer he testify
19 from his own recollection.

20 MR. KREVSKY: I don't have a problem with that,
21 Your Honor.

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Anthony - Direct

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1 MARI ANTHONY, called as a witness, being duly
2 sworn, testified as follows:

3
4 THE CLERK: Would you state your name for the
5 record, please?

6 A Mari Ali Anthony.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. KREVSKY:

10 Q Good morning, Mr. Anthony.

11 A Good morning.

12 Q Mr. Anthony, there have been some allegations that
13 were initially addressed by you to me, and then we have
14 later brought to the Court through a formal motion that is
15 alleging that your previous attorney gave you information
16 that was erroneous.

17 Are you aware of the discussions you have had
18 with me about those?

19 A Yes, I was.

20 Q What I would like you to do, just for way of
21 background, who was your previous attorney?

22 A Kyle Rude.

23 Q Please spell his last name, if you can.

24 A R-u-d-e.

25 Q And Mr. Rude was engaged by you or your family

Anthony - Direct

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1 privately?

2 A Yes.

3 Q Do you recall when?

4 A Maybe around May, 2002.

5 Q Did Mr. Rude discuss with you the consequences of your
6 being indicted by the federal government?

7 A Yes.

8 Q Did you and he discuss what you were looking at in
9 terms of punishment, years?

10 A Yes. From the beginning, he really didn't state that
11 the government was like trying to get me to do anything. As
12 time went on after the suppression hearing, after July, he
13 stated that I was looking at a ten year minimum. He said if
14 I would plead out, I would like at a ten year minimum.

15 Q Did he tell you if you went to trial what you would be
16 looking at?

17 A Yes. He said if he went to trial and I happened to
18 lose the trial, I would be looking at 20 to 25 years.

19 Q So basically the first recollection of the
20 conversations you and he had indicated that there would be
21 -- if you would take a deal, it would be a ten year minimum?

22 A A ten year minimum. He told me I would receive ten
23 years, and I would still have my appeal rights. This is in
24 September of 2002.

25 Q Take your time here. You would still have your appeal

Anthony - Direct

11

1 rights on the suppression hearing?

2 A On the suppression hearing.

3 Q So you would have a conditional plea. Do you
4 understand what that is?

5 A Yes.

6 Q What is a conditional plea?

7 A It means you can plea out and still have your appeal
8 rights.

9 Q He explained that to you?

10 A Right.

11 Q Then he talked about that if you would plead, you
12 would have a ten year sentence or a ten year minimum; do you
13 recall?

14 A He told me a ten year minimum and a ten year sentence
15 also. That was our first conversation that we had.

16 Q That was in September of 2002?

17 A Yes.

18 Q During that conversation, is that the conversation
19 that he told you that if you went to trial --

20 THE COURT: Don't lead him.

21 MR. KREVSky: Pardon me?

22 THE COURT: Don't lead him.

23 MR. KREVSky: I am sorry.

24 BY MR. KREVSky:

25 Q You indicated that there was discussions about a 20 to

Anthony - Direct

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1 25 year sentence?

2 A Yes. That is if I would go to trial and lose the
3 trial, that is what he discussed with me.

4 Q Okay. Now that was in September of 2002?

5 A Yes.

6 Q Was there another conversation you had with Mr. Rude
7 that you recall where the two of you discussed what your
8 potential sentence would be?

9 A I believe I came down here September 26th later on
10 that month of 2002 for the plea hearing. And I asked him a
11 question whether the ten years had a cap on it. And I
12 believe he asked Mr. Behe was it a cap on the ten years.
13 And I believe Mr. Behe said no.

14 So I asked Mr. Rude what would he try to give me
15 as far as the sentence. I asked him were they trying to
16 give me a two to three year enhancement. He said I would be
17 lucky to get that as far as the time.

18 And after he made that statement, he said I am
19 going to push for the ten year minimum.

20 Q Did you have any other conversations with Mr. Rude
21 regarding what your anticipated sentence was?

22 A Yes. February 2003, I made a phone call to him. I
23 asked him why was my psi taking so long. He said he
24 believed the government wanted me to testify at Tyrone
25 Smith's trial.

Anthony - Direct

13

1 I asked him what my guideline was on my plea.

2 And he told me I was looking at the 14 year range.

3 Q This was while your psi is being conducted?

4 A I asked him what was taking so long on the psi because
5 I did my psi right after I took the plea hearing in
6 September of 2002. I talked to him again in February of
7 2003.

8 Q All right. At that point, there was a discussion
9 about a range, and he told you what was the range?

10 A He told me a 14 year range.

11 Q Now --

12 THE COURT: This was after you entered your plea?

13 A Yes.

14 MR. KREVSky: May I approach the witness, Your
15 Honor?

16 THE COURT: Show Mr. Behe.

17 (Letter from Kyle Rude to Sanford Krevsky dated
18 8/15/03 was introduced as Defendant's Exhibit 1.)

19 BY MR. KREVSky:

20 Q Mr. Anthony, I am showing you a letter. The letter
21 has been marked at least by me as Defendant Exhibit 1. Are
22 you familiar with what that letter is?

23 A Yes.

24 Q Okay. Just identify it for the record so they will
25 know.

Anthony - Direct

14

1 A It is a letter from Mr. Rude to your office.

2 Q Have you seen that letter before?

3 A Yes, I seen it yesterday.

4 Q Did you understand the contents of the letter?

5 A Yes, I understand.

6 Q In there, it indicates on the last sentence that --
7 and I will quote -- I also advised him that he was facing a
8 ten year mandatory sentence. When he asked me to provide
9 him with an estimate guideline range, I advised him he would
10 be likely -- lucky -- excuse me -- to keep it around 14
11 years. Did you read that?

12 A Yes.

13 Q Is that true?

14 A He stated that at the plea hearing as an issue. When
15 he first came to me with the plea, he initially said I was
16 going to receive a ten year sentence. When he came to the
17 plea hearing, he said something different.

18 Q And what was that?

19 A He said that -- I asked him the question what would
20 the government try to give me a two or three year
21 enhancement? And he said I would be lucky to get that.

22 Q So the two or three year enhancement, you were
23 thinking 12 to 13?

24 A Correct.

25 Q He said you would be lucky if you would get that?

Anthony - Direct

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1 A Correct.

2 Q At any time -- do you know what you are facing right
3 now?

4 A 30 years.

5 Q At any time, were you advised by Mr. Rude that you
6 were looking at 30 years?

7 A No. He told me that there was no evidence of a
8 conspiracy. I told him from the beginning that I never
9 conspired. He never mentioned the thirty years. The only
10 time he mentioned anything over 20 years was if I would lose
11 the trial.

12 Q Now there was also an indication by you during your
13 testimony earlier that on one of the occasions either Mr.
14 Rude or the government said that they wanted you to
15 cooperate; is that correct?

16 A That was what Mr. Rude told me February 2003 in a
17 phone call.

18 Q At your plea hearing, was there an indication whether
19 or not you should cooperate?

20 A No.

21 Q Was it part of your plea bargain that you needed to
22 cooperate with the federal government?

23 A No.

24 Q When was the first time you heard about your needing
25 to cooperate?

Anthony - Direct

16

1 A When Mr. Rude told me in February of 2003.

2 Q After the plea?

3 A Yes. Mr. Rude made a statement.

4 THE COURT: There is no question before you.

5 A I'm sorry.

6 BY MR. KREVSky:

7 Q I am going to ask you this because it is probably
8 going to come up either by the government or by the Court.
9 At some time, however, during your plea in front of Judge
10 Rambo, questions were asked of you about what you
11 anticipated getting and whether any promises were made to
12 you; is that true?

13 A Yes, I remember.

14 Q And do you recall what you said to the Court?

15 A I said no.

16 Q Why did you say that?

17 A Because I was really confused. I really was confused.

18 Q In discussions with Mr. Rude, did Mr. Rude ever
19 compare the time that you had served with either one of your
20 ages?

21 A Yes. During September, I believe it was September
22 13th, 2002, that is when I signed the plea, he told me that
23 I was going to get ten years, and it would be better if I
24 took a deal and still have a conditional plea. He said
25 worse to worse, if I wouldn't win my appeal, I would be home

Anthony - Direct

17

1 before the age he was.

2 I asked him how old was he, and he told me 35.

3 Q How old are you?

4 A I was 26 at the time.

5 Q Did Mr. Rude ever indicate to you as to what the
6 government through its U.S. Attorney, and particularly
7 Mr. Behe, did he ever tell you what Mr. Behe was prepared to
8 recommend to the Court for a sentence for you?

9 A All Mr. Rude told me is I was getting a ten year
10 mandatory minimum. As far as like enhancements, at the time
11 that we had spoke, he told me that it shouldn't be no
12 enhancements because there was no evidence of a conspiracy.
13 That is what would enhance me.

14 Q Did you plead to the conspiracy at the plea hearing?

15 A Mr. Rude told me when he first -- when he showed me my
16 plea, I asked him was the plea for conspiracy. He told me
17 about the December 6, 1998 date. He told me I was pleading
18 out to the pull over which was April 24th.

19 Q The what over?

20 A The pull over.

21 Q The stopping of the vehicle?

22 A Correct.

23 Q Did you have any intention ever of pleading to
24 anything other than the possession as a result of the motor
25 vehicle stop?

Anthony - Direct

18

1 A Never.

2 Q Did Mr. Rude ever compare your anticipated sentence to
3 a poker game?

4 A Yes.

5 Q Tell us about that.

6 A He said if you go to trial -- he asked me did I know
7 how to play poker. I told him no. He said if I would go to
8 trial, Mr. Behe was holding a ace over my head. He said if
9 I would lose the trial, I would get 20 to 25 years. If I
10 plead guilty, he would not put the 20 year mandatory minimum
11 paper. That was his words.

12 Q There is an indication that you made a threat to
13 Mr. Chapman; correct?

14 A There was an indication.

15 Q You heard him testifying; correct?

16 A I heard him.

17 Q Did you ever threaten Mr. Chapman?

18 A No. I never threatened Mr. Chapman.

19 Q Do you know Barry Daniels?

20 A I really don't know him. Not really.

21 Q Did you meet him at the prison, or did you know him
22 from the street?

23 A I knew him. I seen him around. I really don't know
24 him as a person. I seen him around. I played ball with him
25 in prison.

Anthony - Direct

19

1 Q When you made your plea before the Court, what was
2 your understanding of what you were going to get as part of
3 your sentence?

4 A Mr. Rude during the plea hearing -- well, before the
5 plea hearing, that's when he was telling me about -- I asked
6 him about the two or three year enhancement. He told me I
7 would be lucky to get that. That is what he told me then.
8 So I was expecting that maybe I was going to get 12, 13, 14
9 years at the time when I took the plea,.

10 Q Let me talk to you about acceptance of responsibility.
11 Did you discuss that with Mr. Rude?

12 A At the time I did my psi, he told me to hold off on
13 it.

14 Q He told you to hold off on it?

15 A He told me to hold off on it.

16 Q Did you see then the presentence report indicated that
17 you didn't provide one?

18 THE COURT: You are starting now with a new issue
19 that I don't think has been raised.

20 MR. KREVSky: We did raise the acceptance of
21 responsibility issue before.

22 THE COURT: Right. But now you are saying that
23 counsel told him not to? I don't think that was raised
24 before.

25 MR. KREVSky: He did testify to that. We did

Anthony - Direct

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1 bring it up in the objections to the presentence
2 investigation.

3 THE COURT: I know you did, but I thought it was
4 in the form that you felt that he should have been given it,
5 not that counsel told him not to.

6 MR. KREVSKY: That's correct. I am not saying --

7 THE COURT: Now, you are.

8 MR. KREVSKY: I am not saying that he was
9 ineffective for telling him not to. I am just trying to
10 explain to the Court so the Court understands my client's
11 approach to acceptance of responsibility.

12 THE COURT: All right.

13 MR. KREVSKY: Thank you.

14 THE COURT: I already ruled on it, but I will
15 reconsider it.

16 MR. KREVSKY: Thank you, Your Honor.

17 BY MR. KREVSKY:

18 Q Mr. Anthony, in terms of accepting responsibility,
19 when you entered a plea before Judge Rambo, what was your
20 expectation in terms of accepting responsibility, for what
21 offense?

22 A For the pull over on April 24, 2002.

23 Q To this day, are you prepared to accept responsibility
24 for your involvement with conspiracies with a Mr. Dykes, a
25 Mr. Carter or a Mr. Pitts?

Anthony - Cross

21

1 A No, I'm not. +

2 Q Why is that?

3 A Because I never dealt with any of them. I never had
4 no conspiracy with any of them.

5 Q Do you know all of them?

6 A I know of Mr. Dykes through my son's mother and his
7 brother. I really don't know Aaron Pitts.

8 Q What about Mr. Carter?

9 A I don't know Mr. Carter.

10 MR. KREVSKY: I beg the Court's indulgence
11 please.

12 BY MR. KREVSKY:

13 Q Did Mr. Rude indicate to you that -- strike that,
14 please. Subsequent to your entering your plea, did Mr. Rude
15 indicate to you that your sentence might be enhanced because
16 you were not cooperating?

17 A No. He told me about enhancements for my prior -- no.
18 No.

19 MR. KREVSKY: That is all I have. Thank you very
20 much.

21 THE COURT: Cross-examine.

22 CROSS-EXAMINATION

23 BY MR. BEHE:

24 Q Mr. Anthony, you realize, don't you, that your
25 sentence was not enhanced because you did not cooperate?

Anthony - Cross

22

1 A Say that again, Mr. Behe.

2 Q You understand, don't you, that your sentence where it
3 stands now is not on the basis of an enhancement for not
4 cooperating; don't you?

5 A Do I understand that it is not enhanced because I did
6 not cooperate?

7 Q Yes. What happened is that you didn't get a break for
8 not cooperating, but your sentence didn't go up because you
9 didn't cooperate; do you understand that?

10 A I understand.

11 Q Let me see if I can walk through your testimony to
12 make sure I understand it. Your attorney told you that you
13 were facing a mandatory term of imprisonment of ten years?

14 A Correct.

15 Q Do you know what that means?

16 A Yes, I know what it means.

17 Q And your attorney told you that had you gone to trial,
18 there is a possibility you could be sentenced in the 20 some
19 year range; correct?

20 A If I were found guilty.

21 Q Of course. If you were innocent, you wouldn't be
22 sentenced at all. You understand that?

23 If you were convicted, you could be in the twenty
24 year range; correct?

25 A That is what he says.

Anthony - Cross

23

1 Q Before you even entered your guilty plea, you signed a
2 plea agreement that told you that you faced a mandatory
3 minimum term of ten years; correct?

4 A Correct.

5 Q And a possibility of up to life imprisonment; is that
6 correct?

7 A I remember.

8 Q Not only do you remember. You signed that document;
9 didn't you?

10 A Yes, I did.

11 Q Now before you pled guilty, you are telling us that
12 your attorney told you that you would be lucky if you got a
13 sentence in the 14 year range; is that correct?

14 A He told me after I asked him about the enhancement two
15 or three years, he told me that I would be lucky to get
16 that, yes. That was before the plea hearing.

17 Q You would be lucky if your sentence was as low as 14
18 years; is that correct?

19 A As low as 12 to 13 years, correct.

20 Q He said you would be lucky if that happened?

21 A That is what he said.

22 Q He told you that before you stood in front of the
23 Court and decided to plead guilty anyway; is that correct?

24 A That is what he told me.

25 Q Have you done a guideline calculation of your

Anthony - Cross

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1 sentencing guidelines if the relevant conduct did not apply
2 in your case?

3 A No. That is when I called him in February of 2003. I
4 asked him about the guidelines.

5 Q No. I am asking you have you done or did you and Mr.
6 Rude talk about what your guideline range would be if there
7 was no other enhancements and the Court did not consider
8 other drug trafficking activity as relevant conduct?

9 A Excuse me. He told me I would be at a 34 offense
10 level, and I would be in the maybe four, five, six range,
11 like on the top of the guidelines.

12 Q You would be around 14 years if there wasn't any
13 relevant conduct consideration of other drug trafficking or
14 any other enhancement that the Court applied; you understand
15 that, right?

16 A Can you say it again, Mr. Behe?

17 Q If there was no other enhancement or your guidelines
18 didn't go up because the Court considered relevant conduct
19 and the Court considered only the drug amounts that were
20 found on April 24th, you would be around the 14 year range;
21 do you understand that?

22 A I understand.

23 Q Your lawyer I guess was advising you that it was his
24 opinion that the Court would not believe the information
25 about other drug trafficking and that your sentence if you

Anthony - Cross

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1 were lucky would be based upon what you were caught with
2 when you were stopped an April 24th, 2002; is that correct?

3 A Mr. Rude told me there was no evidence prior to April
4 24th of a conspiracy.

5 Q Did you hear Judge Rambo at your change of plea tell
6 you specifically that if she finds that there was evidence
7 of other drug trafficking, that that would be considered
8 under relevant conduct?

9 A That's the part I didn't understand.

10 Q You seem to understand a lot. What is there that you
11 didn't understand about that?

12 A When she said relevant conduct, I thought I was just
13 taking a plea for April 24th. And when you state I believe
14 at the plea hearing that there were witnesses saying we were
15 in a conspiracy, Mr. Rude prior -- like when he came to see
16 me, he told me when I went to a discovery meeting that there
17 was no witnesses. There was one witness that I sold them
18 drug. When I went to the plea hearing, it kind of threw me
19 off when you said there was more witnesses.

20 Q I am asking you at the time that you entered your
21 plea, you and your attorney advised the Court that you were
22 admitting only to the conduct that occurred on April 24th;
23 is that correct?

24 A Correct.

25 Q You told the Court through your counsel that you would

Anthony - Cross

26

1 be contesting any other information that would be called
2 relevant conduct that might get you an increased sentence;
3 isn't that correct?

4 A I can't remember that part there, Mr. Behe.

5 Q You mean the part that might affect your case here
6 today you don't remember?

7 A No. I don't remember the part contesting the relevant
8 conduct. I don't remember him really stating that.

9 Q You don't remember Judge Rambo telling you that if she
10 finds this other information to be credible, that you are
11 going to lose acceptance of responsibility, and your
12 sentence could be enhanced under that relevant conduct?

13 A I remember Your Honor saying if she finds there is
14 relevant conduct, my guidelines will change. I don't
15 remember Mr. Rude saying he is going to contest relevant
16 conduct. I don't remember him saying nothing like that.

17 Q When you entered into your plea agreement, you told
18 Mr. Rude that you did not want to cooperate with the United
19 States; is that correct?

20 A That's correct. I told him I wanted to fight my case.

21 Q You obviously changed your mind because you pled
22 guilty; correct?

23 A I pled guilty to?

24 Q To the charge that you are going to be sentenced on.
25 You obviously changed your mind and didn't fight your case

Anthony - Cross

27

1 and you pled guilty?

2 A I thought I was pleading guilty to a pull over. He
3 told me I was not pleading guilty to no conspiracy.

4 Q When you got a plea agreement from the government, Mr.
5 Rude made sure that there was no language in that plea
6 agreement that required you to cooperate; is that correct?

7 A Mr. Rude really didn't read over the plea agreement
8 with me. He just read the dates over with me, and he read
9 the conditional plea over with me, paragraph 14.

10 Q Now you are alleging that counsel didn't even go over
11 the terms of the plea agreement with you?

12 A Counsel told me -- this is what he did. He took my
13 plea. He took my plea bargain out, my plea agreement, set
14 it on the desk. And he told me -- I asked him specifically
15 was I pleading guilty, was this for conspiracy? And he said
16 you are not pleading guilty to these dates from December
17 6th, 1998 on up. You are pleading guilty to April 24th,
18 2002.

19 Q That was right. You understand that?

20 A I was just pleading guilty to April 24th, 2002.

21 Q That's right. Do you understand that?

22 A Yes.

23 Q You didn't plead to a conspiracy. Do you understand
24 that?

25 A No. I wasn't pleading guilty to a conspiracy.

Anthony - Cross

28

1 Q And you didn't. Go ahead. Continue with what counsel
2 did or didn't do with the plea agreement.

3 A He said I was pleading guilty to April 24th, 2002.
4 And I flipped the page. And I believe he ran over I think
5 it was paragraph 14 of my conditional plea. He said we
6 still had appeal rights.

7 Q That's true. Are you saying that's all he did with
8 regards to the plea agreement?

9 A That is what he did.

10 Q So you didn't even go over the penalty provision?

11 A As far as the ten year minimum to life?

12 Q Yes.

13 A I don't recall, Mr. Behe.

14 Q Again in terms of what you are saying under oath here
15 today versus what you said under oath when you pled guilty,
16 when you stood before Judge Rambo and pled guilty, she
17 showed you a plea agreement, had the Clerk hand you the plea
18 agreement. Do you remember that?

19 A I believe so.

20 Q What do you mean you believe? You remember being
21 shown the plea agreement; don't you?

22 A I believe I remember being shown the plea.

23 Q Specifically, you were directed to look at the last
24 page, and you were asked if that was your signature; do you
25 remember that?

Anthony - Cross

29

1 A I remember that.

2 Q The Judge specifically asked you have you gone over
3 that entire document with your attorney, and you said yes.

4 A I remember she saying turn to the back. Your Honor
5 said turn to the back page where my signature is. I don't
6 remember Ms. Rambo going over the whole plea.

7 Q The record of the guilty colloquy says what it does.
8 There is a transcript of that.

9 Did you tell the truth when you were before the
10 Court and you pled guilty? Did you answer the questions
11 truthfully?

12 A Was I promised anything?

13 Q All the questions, did you answer all the questions
14 that were put to you truthfully like you swore you would do
15 when you were placed under oath?

16 A I can't remember all the questions exactly.

17 Q You think you may have lied under oath?

18 A No, I didn't lie under oath.

19 Q What you have, Mr. Anthony -- and you correct me if
20 this doesn't sound right -- your attorney comes to you and
21 says that there's a possibility he could get you a sentence
22 in the ten to fourteen year range if you plead guilty; is
23 that correct?

24 A Original conversation, he said ten years.

25 Q Ten year mandatory minimum?

Anthony - Cross

30

1 A That was September 13th, 2002. The second time we
2 spoke was before the plea hearing. That was September 26th.

3 Q Go ahead. I am sorry.

4 A That is when I asked him -- that is when I started to
5 gather information as far as me saying about a ten year cap.
6 I believe that's when he asked you was it capped up that you
7 can remember. He came over and told me no. I said what are
8 trying to do, give me an enhancement of two or three years?
9 And Mr. Rude said I would be lucky if I get that.

10 Q See if you remember this. Did your attorney tell you
11 that because you insisted on a plea agreement that was a
12 conditional plea that allowed you to appeal the Court's
13 denial of your suppression motion that the United States
14 would not agree to a plea agreement where you would be
15 capped and still let you have your appeal rights, that you
16 would have a plea agreement where you had to plea open to
17 the charge and then you could pursue your right to appeal,
18 and that is why you would be lucky to look at 14 years; do
19 you know that?

20 A I remember Mr. Rude coming to me. He sent me a plea
21 agreement in the mail. He asked me was I in agreement with
22 this. That is what his letter was saying. After that, he
23 came to see me September 13th.

24 When I first read the first -- I think it was the
25 first page, it already said I was in agreement. I never

Anthony - Cross

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1 agreed to a plea agreement. I already said that I was in
2 agreement with this.

3 He told me about the ten year minimum conditional
4 plea, and I would receive -- he told me I would receive ten
5 years with a conditional plea.

6 Q Now you were asked this question by Mr. Krevsky about
7 the information provided by all of the individuals who
8 claimed that you were involved with drug trafficking with
9 them -- Dykes, Pitts, all of those individuals.

10 You are denying all of the relevant conduct in
11 your presentence investigation report where other people
12 said you were involved in drug trafficking activities
13 earlier than April 24th, 2002; is that correct?

14 A Yes. I am denying that.

15 Q You are saying that they are making that up?

16 A I'm saying I am denying it. I never dealt with these
17 guys. Maybe these guys were trying to get out of trouble
18 themselves.

19 Q You are saying you had no drug involvement at all
20 before the 24th or just with those individuals?

21 MR. KREVSky: I would like to object. That is
22 not what the question was. The question on direct
23 examination was I named three specific individuals that were
24 named in the presentence report. I asked about those three
25 individuals. And the answer to that was I was not involved

Anthony - Cross

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1 with those.

2 So I think he is mischaracterizing what my client
3 said on direct examination.

4 THE COURT: Rephrase your question.

5 BY MR. BEHE:

6 Q Regardless of what you were asked on direct, are you
7 denying being involved in drug trafficking?

8 MR. KREVSKY: I am going to object to that. That
9 is outside the scope of what was brought up on direct
10 examination.

11 THE COURT: I will sustain the objection.

12 MR. BEHE: Then I have no additional questions.

13 THE COURT: Anything on Chapman?

14 BY MR. BEHE:

15 Q You are denying threatening Chapman?

16 A Yes, I am.

17 Q Do you know him?

18 A No, I don't.

19 Q You don't even know the man who sat here in court and
20 identified you?

21 A I seen Chapman maybe two times on the news. I don't
22 know Chapman, never had a conversation with him, never shook
23 his hand, never did nothing. I don't know him.

24 MR. BEHE: That is all.

25 THE COURT: Who were the three people that you

Anthony - Cross

33

1 mentioned in your question?

2 MR. KREVSKY: Mr. Carter, Mr. Pitts and Mr.
3 Dykes.

4 THE COURT: I know he was asked during the plea
5 colloquy concerning involvement with some people.

6 MR. KREVSKY: If it please the Court, I believe
7 what he was asked during his -- the plea, the change of plea
8 was about Tyrone Smith, and he refused.

9 THE COURT: No, there were two people. I have to
10 find it here. I asked him about two people. One, he said
11 no, and the other one he said yes.

12 MR. BEHE: It may have been Lawrence Johnson, the
13 other individual in the traffic stop.

14 THE COURT: Do you have any redirect?

15 MR. KREVSKY: That's the one, Your Honor.
16 Mr. Johnson was the one he was with during the traffic stop.
17 He did admit his involvement with him.

18 THE COURT: Do you have any further questions?

19 MR. KREVSKY: No, I do not.

20 THE COURT: You may step down.

21 MR. KREVSKY: If it please the Court, I would
22 call Barry Daniels.

23

24

25

Daniels - Direct

34

1 BARRY DANIELS, called as a witness, being duly
2 sworn, testified as follows:

3

4 THE CLERK: Would you state your name, please?

5 A Barry G. Daniels.

6 THE CLERK: Thank you.

7

DIRECT EXAMINATION

8 BY MR. KREVSky:

9 Q Good morning, Mr. Daniels.

10 A Good morning.

11 Q Mr. Daniels, you are currently incarcerated?

12 A Yes.

13 Q Where?

14 A Dauphin County Prison.

15 Q Did you ever meet me before?

16 A Yes.

17 Q How many times?

18 A Once.

19 Q That was at Dauphin County Prison?

20 A Yes.

21 Q Did I ask you if you had an attorney at that point?

22 A Yes.

23 Q What did you tell me?

24 A I had an attorney Brian Perry.

25 Q Did I ask you if you would feel comfortable if

Daniels - Direct

35

1 Mr. Perry were around when I would ask you questions?

2 A Yes.

3 Q What did you tell me?

4 A Yes.

5 Q Did I stop questioning you at that point?

6 A Yes, you did.

7 Q Do you know my client Mari Anthony?

8 A Not really.

9 Q Do you see him at the prison?

10 A Last year when I was incarcerated, we had -- I was on
11 a different block, but we went to gym every morning.

12 Q Just for your own satisfaction and certainly to let
13 the Court know, I am not going to ask you anything at all
14 except something about a man named Chapman.

15 Do you know Mr. Chapman?

16 A Yes, I do.

17 Q What is his first name?

18 A Brian.

19 Q How well do you know him?

20 A Very well. He's my first cousin.

21 Q He is your first cousin?

22 A Yes.

23 Q Did you receive information from anyone regarding
24 threats that were supposedly made by Mr. Anthony to
25 Mr. Chapman?

Daniels - Direct

36

1 A No.

2 Q Did you ever discuss with Mr. Chapman any threats that
3 Mari Anthony made against him?

4 A Yes.

5 Q What if anything was said?

6 A He told me the night it was supposed to happen, we was
7 down at my sister's house on South 13th Street. He went to
8 the All Nighter.

9 Q Who did?

10 A My cousin Brian Chapman. When he came back, he was
11 just like -- he saw Manny's people.

12 THE COURT: Saw what?

13 MR. BEHE: Manny's people I believe is what he
14 said. Is that what you said?

15 A Yes, sir.

16 BY MR. KREVSky:

17 Q Who is Manny?

18 A I am not sure of his real name.

19 Q Did he ever tell you anything -- is Manny Mari Anthony
20 if you know?

21 A I don't think, no.

22 Q Did he ever tell you that supposedly Mari Anthony
23 threatened him?

24 A No, he did not.

25 Q Did he tell you that he told people that Mari Anthony

Daniels - Direct

37

1 threatened him?

2 A No, he didn't.

3 Q Did he tell you who the people were that threatened
4 him at the All Nighter?

5 A He never told me he was threatened.

6 Q What did he tell you?

7 A He told me whoever it was at the All Nighter, they was
8 just like -- it wasn't right telling on his cousin or
9 whoever it was. There was no need for that. There was no
10 need to tell on his cousin because he wasn't facing no time
11 or nothing, so what is the point in telling?

12 Q Did he ever mention that anyone brandished a firearm
13 at that point?

14 A No, no.

15 Q If you recall, Mr. Daniels, do you remember when this
16 happened?

17 A I am not sure of the month. I know it was cold out.
18 It was winter.

19 Q Do you remember what year?

20 A It was 2002.

21 Q And if you know, was it before Christmas?

22 A It after Christmas. It was beginning 2002.

23 MR. KREVSky: I beg the Court's indulgence, Your
24 Honor.

25

Daniels - Cross, Redirect

38

1 BY MR. KREVSky:

2 Q In conversations you have had with your cousin
3 Mr. Chapman, did he ever indicate that he even knew Mari
4 Anthony?

5 A No, no, he did not.

6 Q You discussed this thing that happened at the All
7 Nighter with him, and he never brought up Mari Anthony's
8 name?

9 A No.

10 MR. KREVSky: That is all I have.

11 THE COURT: Cross-examine.

12 CROSS-EXAMINATION

13 BY MR. BEHE:

14 Q Mr. Daniels, you said it was Manny's people that
15 approached him there?

16 A Yes.

17 MR. BEHE: Thanks. That is all I have.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. KREVSky:

21 Q And no threats were made?

22 A No.

23 MR. BEHE: That is a mischaracterization.

24 THE COURT: I sustain the objection.

25

Daniels - Redirect, Barrett - Direct

39

1 BY MR. KREVSKY:

2 Q Did Mr. Chapman indicate to you that anyone threatened
3 him that night?

4 A No, he did not.

5 MR. KREVSKY: That is all I have.

6 THE COURT: Recross?

7 MR. BEHE: No.

8 THE COURT: You may step down. Anything further?

9 MR. KREVSKY: I believe that is all, Your Honor.

10 THE COURT: Mr. Behe?

11 MR. BEHE: I would like to call Special Agent
12 Barrett. He didn't anticipate being a witness.

13 THE COURT: I understand.

14 MR. BARRETT: Excuse my appearance.

15

16 JOHN BARRETT, called as a witness, being duly
17 sworn, testified as follows:

18

19 THE CLERK: Would you state your name, please?

20 A John M. Barrett.

21 DIRECT EXAMINATION

22 BY MR. BEHE:

23 Q You are a Special Agent with the Drug Enforcement
24 Administration; is that correct?

25 A Yes.

Barrett - Direct

40

1 Q And were you involved in the investigation into the
2 drug trafficking activities of Tyrone Smith, Junior, Mari
3 Anthony, Lawrence Johnson and others?

4 A Yes, I was.

5 Q Did you have an opportunity to interview a Brian
6 Chapman concerning allegations he was making about being
7 threatened by Mari Anthony and other unknown individuals if
8 you were to cooperate and testify against Tyrone Smith?

9 A Yes, I did.

10 Q Will you tell us please when you interviewed
11 Mr. Chapman and he made those allegations?

12 A I interviewed Mr. Chapman on February 21st, 2002.

13 Q And did he tell you how recently that incident was
14 supposed to have occurred in relation to when you
15 interviewed him?

16 A Yes. Mr. Chapman stated on February 21st, 2002 that
17 this incident happened one and a half to two weeks prior,
18 either on a Friday or Saturday night at approximately twelve
19 midnight or 1:00 AM the following morning.

20 Q So maybe around the 12th, 13th or something of
21 February?

22 A Yes.

23 Q Of 2002?

24 A Correct.

25 MR. BEHE: That is all I have.

Barrett - Cross

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1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. KREVSKY:

4 Q Agent Barrett, did you do anything to check out the
5 whereabouts of my client at that period of time?

6 A No, I did not.

7 Q At any time, did you confront my client with the
8 indication that he had supposedly threatened Mr. Chapman?

9 A No.

10 Q If you recall, did you ask Mr. Chapman why he didn't
11 report the incident sooner?

12 A No, I did not.

13 Q And your involvement with Mr. Chapman was what prior
14 to that point?

15 A I am sorry?

16 Q Did you have any involvement with Mr. Chapman prior to
17 that point?

18 A Yes, I did.

19 Q That was as a result of what?

20 A I'm sorry. Not as a result of anything. Could you
21 rephrase your question?

22 Q I'm sorry. You had contact with Mr. Chapman prior to
23 the 21st of February?

24 A Yes, I did.

25 Q In what capacity did you have contact with him?

Barrett - Cross

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1 A Mr. Chapman was a confidential source for the Dauphin
2 County Drug Task Force.

3 Q Is it also fair to say that Mr. Chapman was in trouble
4 himself?

5 A Mr. Chapman had pending charges from the Dauphin
6 County Drug Task Force.

7 MR. KREVSky: That is all I have. Thank you very
8 much.

9 THE COURT: Any redirect?

10 MR. BEHE: No redirect, Your Honor.

11 THE COURT: You may step down.

12 MR. BEHE: I have no other witnesses either.

13 THE COURT: I will listen to argument.

14 MR. KREVSky: Your Honor, I know this is unusual,
15 but could I ask Agent Barrett one last question?

16 THE COURT: You can do it from there.

17 MR. KREVSky: Thank you very much.

18 BY MR. KREVSky:

19 Q Officer Barrett, did Mr. Chapman indicate to you as to
20 whether or not he knew my client from before?

21 A Yes, he did.

22 MR. KREVSky: Thank you.

23 THE COURT: Argument?

24 MR. KREVSky: One last witness, Your Honor.

25 THE COURT: Is this rebuttal?

1 MR. KREVSKY: No. This would be my client's
2 father.

3 THE COURT: For what reason?

4 MR. KREVSKY: In terms of what Mr. Rude may have
5 told him.

6 THE COURT: Mr. Behe?

7 MR. BEHE: I don't know how that impacts on what
8 Mr. Anthony has testified to already as to what he claims
9 went into his decision making process.

10 THE COURT: I will deny the request.

11 MR. KREVSKY: I would like to make argument to
12 the Court if I could.

13 THE COURT: Go ahead.

14 MR. KREVSKY: Is the table appropriate, Your
15 Honor?

16 THE COURT: That is fine.

17 MR. KREVSKY: Your Honor, Judge, basically, what
18 this comes down to is some of the things that we have cited
19 in the brief that was presented to the Court. And I guess
20 let me just start with this, Judge.

21 I think that what my client was anticipating --
22 and let's assume that he is a hundred percent right in terms
23 of what Mr. Rude told him, and that is that he would be
24 lucky if he would get the two to three year enhancement
25 which would put him up to 12 to 13. Let's assume that the

1 luck wouldn't be there, and he could get six more years.
2 That puts him up to 18 or 19.

3 Let's even give him another three or four years
4 because he got bad luck. That puts him up to 22. He is
5 facing 360 months incarceration, which is way out of line
6 with what his expectations are.

7 I don't think it is un rebutted that my client's
8 worst case scenario according to counsel would have been 20
9 to 25 years if he went to trial. He didn't go to trial.
10 And now he is looking at ten or fifteen years more than that
11 scenario.

12 I believe, Your Honor, that one of the cases that
13 we quoted indicates that it would be a denial of due process
14 to the extent that to receive a sentence like that would
15 shock the conscience of a person in terms of what he or she
16 expected to receive.

17 THE COURT: I am sorry. I don't follow you.

18 MR. KREVSky: That if a person negotiates a plea
19 and receives something that is so inconsistent with what
20 counsel told him or her that they were to receive, that
21 would shock -- I think was the wording -- it would shock the
22 universal sense of justice. It would be fundamentally
23 unfair to have a person being advised that this is what you
24 are looking at, and then this is what you receive
25 afterwards.

1 Judge, I have read the colloquy. I have been
2 privy to a lot of colloquys before. And a lot of people are
3 in front of the Court and make statements to the Court that
4 they understand things and they don't fully understand
5 things.

6 I don't think that is the be all, end all that
7 there was a colloquy with the Court and that my client fully
8 understood it.

9 As an example of that, Judge, I would like to go
10 to the guilty plea colloquy. At some point, the Court and
11 my client were having a dialogue, and you are trying to tell
12 him that relevant conduct would be considered.

13 He and Mr. Rude are trying to argue to the Court
14 that he only wants to plead guilty to the possession with
15 intent that occurred on the day of the stop or as he calls
16 it the pull over.

17 And here is what the Court ends up saying to my
18 client on page 18 of the guilty plea. Mr. Rude says to the
19 Court: It is not the amounts, Your Honor. It is the time
20 period and the persons with whom he is alleged to have
21 conspired, aided and abetted.

22 The Court: I will accept the plea. If I find
23 that you were involved in more than this, you realize it is
24 going to impact on your sentence, the amounts?

25 The amounts weren't in question. The amounts

1 weren't in question. Does that mean that the amount of the
2 drugs, Your Honor, or does that mean the amount of the
3 sentence that he is to get. I honestly don't --

4 THE COURT: It is the amount called for under
5 Count 2 as an aider and abettor.

6 MR. KREVSKY: But what he was saying is I was not
7 involved in that. That is what he was trying to explain to
8 the Court, and that is what his attorney was trying to say
9 to the Court, that I wasn't involved in that. That's where
10 I think the confusion came in. That's why we are here.

11 THE COURT: There is no confusion as to what
12 count he pled to. There is no confusion several times
13 throughout the colloquy that he was advised that he had a
14 mandatory minimum of ten with a maximum of life.

15 MR. KREVSKY: That's a given. I understand that,
16 and I think my client --

17 THE COURT: Several times. He was asked whether
18 he had any questions about that. He was also told -- he was
19 also asked has anyone promised you any other sentence, and
20 he says no.

21 Then I also advised him if anyone has suggested
22 to him a sentence that is contrary to what the Court finds
23 after the presentence report, he couldn't withdraw his plea.
24 That is all in there.

25 MR. KREVSKY: He wasn't advised of something

1 contrary. He was advised something that would be within
2 that mandatory term. That is what he is telling the Court.

3 THE COURT: I said if it is contrary to what the
4 Court finds is applicable to him. I also told him that the
5 guideline would not be known until after his presentence
6 report was completed. And if anyone had suggested a
7 guideline contrary to what the Court finds, he could not
8 withdraw his guilty plea. That is in there.

9 MR. KREVSKY: I understand, Judge. I understand
10 that. Judge, I would like, if you wouldn't mind, if you
11 would just at least consider the cases that we have brought
12 to the Court's attention including the Strickland case, the
13 Gillis case and the Baker case.

14 THE COURT: The Gillis case is distinguishable.
15 In that case, right in front of the State Attorney and in
16 front of the Court, there was an affirmation by defense
17 counsel to the defendant that he would be entitled to parole
18 I believe even though he had a life sentence which the Court
19 and the prosecutor knew was in error.

20 MR. KREVSKY: Correct.

21 THE COURT: We don't have that here.

22 MR. KREVSKY: We don't have that part of it here.
23 That we don't have, Your Honor. But we do have is what they
24 did is they tried to establish a standard, and the standard
25 if there was grossly erroneous information.

1 And if he was told that the government was
2 recommending that he receive somewhere in the ball park of
3 figure 12 to 18 years, something even in that ball park and
4 he does not get that and doesn't go to trial as a result of
5 that and ends up with thirty years, he was prejudiced. And
6 that is the second prong of that standard that was outlined
7 in that case.

8 That is what I am arguing. I understand that in
9 that particular case, it was distinguishable because the
10 statute had changed and the information that was given to
11 him was clearly erroneous by -- the Judge didn't have it
12 together. The prosecutor didn't have it together, nor the
13 defense attorney.

14 It is the standard that I am talking about that
15 they used in that case, Your Honor, for the ineffective
16 assistance of counsel.

17 Again, Your Honor, particularly I guess in the
18 baker case, they indicated that if the erroneous information
19 was not given, then a different result could have occurred
20 for the client.

21 THE COURT: What would have been the different
22 result?

23 MR. KREVSky: He could have gone to trial. He
24 could have gone ahead and introduced information either
25 through his own witnesses or testimony that Mr. Chapman was

1 lying. And I think if they would have found that he was
2 lying and the information that Mr. Chapman was wanted or had
3 charges pending against him and was trying to cut a deal for
4 himself and to tell on my client as well as the other
5 people, at least according to my client's unrebutted
6 testimony, three people provided information, two of which
7 he didn't even know. Two of whom he didn't even know.

8 If he could have brought that out during trial,
9 he could have maybe won that trial.

10 THE COURT: On just that issue?

11 MR. KREVSKY: Judge, I don't know what the jury
12 would have found. I don't think anybody can say that.
13 Stranger things have happened.

14 They may have found that they were offended by
15 the search, even though the Court would have allowed the
16 information to come in about the suppression of the evidence
17 and the Court allows it in, maybe the jury would have been
18 offended by it and maybe the jury would have done whatever
19 they would have done and found them not guilty. We don't
20 know that.

21 But we do know that he is presented evidence that
22 witnesses against him had a reason to lie. And also that at
23 least one of the people -- and the Court found that my
24 client might not even have had a gun in a situation when
25 somebody testified before the Grand Jury and before the

1 trial that my client had a gun.

2 So for those reasons, I think that he should be
3 allowed to withdraw his guilty plea. And I would ask the
4 Court to so find.

5 THE COURT: Mr. Behe? First of all, I don't
6 think the initial allegation on which this motion was
7 founded, that is that he was promised a ten year term is no
8 longer an issue. I think by his own testimony, he was
9 advised that it was a mandatory minimum. So address the
10 other issues.

11 MR. BEHE: Your Honor, I will try and work my way
12 back from the most recent allegation that is freshest in my
13 mind.

14 Mr. Krevsky confuses some things. The Court did
15 not conclude that Marcus Carter was not credible on the
16 issue of the gun. Your Honor simply examined the trial
17 transcripts and ruled that there was no testimony at trial
18 that there was ever a gun in a car.

19 That does not mean that the DEA did not interview
20 him, that that was information that he provided the DEA that
21 we provided to the Probation Department.

22 We are simply relying on testimony at trial. So
23 there was no finding by the Court that he is not credible.
24 Your Honor's memorandum said there was no trial testimony on
25 the issue of a gun.

1 I will dismiss Mr. Daniels' testimony. If
2 anything, Barry Daniels' testimony corroborates Mr. Chapman.
3 An incident so remarkable must have occurred that
4 Mr. Chapman told Mr. Daniels about going to the All Nighter
5 and being approached by Manny's people. He was told not to
6 testify against him.

7 Whether he says Mari Anthony or not, Manny is
8 Tyrone Smith. The incident was obviously so remarkable that
9 he brought it to his attention. Everything else is classic
10 negative hearsay. Were you told this? No. Did he say
11 this? No. It doesn't mean it didn't happen. It just means
12 that there was no discussion about it.

13 Mr. Daniels' testimony does nothing to affect
14 Mr. Chapman's credibility. In fact, a number of witnesses
15 testified at the trial of Tyrone Smith that Smith had said
16 that he was going to send people out to approach Chapman, to
17 get him not to testify.

18 However, the most important issue is whether
19 there would be a basis, a fair and just reason to allow this
20 defendant to withdraw his guilty plea. I respectfully
21 suggest that there is none.

22 This is a classic case of an individual's
23 disappointed expectations about the sentence he is going to
24 receive driving his motion to get out of the guilty plea
25 that he knowingly and intelligently and voluntarily entered

1 in this particular case.

2 I think Mr. Rude's letter, brief as it is, is
3 instructive on this. Because in that letter, he says he did
4 not advise the defendant that the government would recommend
5 a sentence of ten years. He told him that I would not file
6 a motion to get a mandatory twenty years, which is correct.
7 And that he would be lucky if he got a sentence anywhere
8 around 14 years.

9 From that, I can divine that Mr. Anthony must
10 have been told that his sentence could very well exceed 20
11 years. That is why they negotiated there not being an
12 information filed by the government to get a mandatory
13 minimum of twenty years based on his prior felony drug
14 conviction.

15 There would be no reason to discuss that if that
16 were not the expectation that the sentence could exceed 20
17 years. This also suggests to me that by entering a
18 conditional plea, Mr. Rude told his client that he would be
19 lucky if his guideline range were based on solely the amount
20 of drugs that were involved in the April 24th, 2002 traffic
21 stop. That would have kept it around maybe the 14 year
22 range.

23 And Your Honor specifically told the defendant
24 that at the time of the change of plea, that the relevant
25 conduct would apply.

1 We have to have some confidence in sworn
2 testimony or sworn answers given by a defendant when under
3 oath before the Court and asked about the voluntariness of
4 the plea, the understanding of the potential consequences.

5 It would simply undermine the entire guilty plea
6 process if in a case that is so clear as this that the
7 defendant could come in and make the arguments that he does
8 here today.

9 There is absolutely no testimony even from the
10 defendant that the government promised him any particular
11 sentence. This is just his disappointed expectations about
12 what would happen, his gamble that relevant conduct would
13 not be accepted as credible. And his guideline range is
14 well deserved and appropriate.

15 I did not have Mr. Rude here today because I did
16 not expect a hearing. I don't think based on this record
17 that it would have been necessary in any event. Thank you.

18 THE COURT: We will take a ten minute break.

19 THE CLERK: Court is in recess.

20 (A recess was taken.)
21
22
23
24
25

1 AFTER RECESS

2 THE COURT: Please approach. With regard to what
3 I consider the renewed objection on the Chapman threat, the
4 Court maintains its original decision.

5 With regard to the incompetency of counsel, first
6 of all, I find that counsel did not promise him a maximum of
7 ten years or a minimum of ten years. Nor do I find that Mr.
8 Rude promised him a cap on his sentence. I believe the
9 letter that he wrote certainly defies that argument that he
10 promised a cap.

11 Furthermore, I believe that the defendant fully
12 was aware of the potential sentence. It was set forth in
13 the plea agreement, which he signed. The plea agreement was
14 explained in court.

15 He was asked whether there were any questions
16 concerning the plea agreement. He was also asked in the
17 plea colloquy at pages 6, 8 and 9 and also advised of his
18 maximum sentence on what the sentence potential was, whether
19 he had any promises of a sentence other than what was stated
20 by the Court, to which there was a negative reply.

21 He was also asked whether he had any questions
22 concerning the plea agreement and the sentence he was to
23 receive.

24 Also I think it is important to note I believe
25 somewhere in his testimony he made mention of a discussion I

1 think of an offense level of 37 that was discussed between
2 him and counsel or maybe it was 34.

3 But in any event, by his own conduct in this
4 case, he put himself into a career offender category of a
5 level 37, category six which would have given him the same
6 sentence that he is facing now.

7 So even without the enhancements, he would be
8 facing a potential sentence.

9 Do you wish to speak on his behalf?

10 MR. KREVSky: Just briefly, Your Honor. First of
11 all on behalf of my client and his family, his family is
12 here, Your Honor. I imagine you have seen them. His mother
13 is here. His father is here. Two of his aunts are here,
14 his sister and a cousin.

15 But on behalf of my client, I would wish to thank
16 the Court for giving us the access you have to this Court to
17 make the arguments we have had. And some of the requests
18 were unique and not as timely as the Court would have
19 wanted. I appreciate your giving us the opportunity.

20 Regarding the Court's decision, I understand the
21 Court's holding on that; although, I would ask the Court to
22 consider the objections we made regarding sentencing.

23 To the extent that the Court does have
24 discretion, I have outlined all the things I wanted to say
25 to the Court and to the Probation Office in two sets of

1 objections that we have outlined. And the Court has
2 addressed most of those.

3 THE COURT: Which ones haven't I?

4 MR. KREVSKEY: You have addressed them. You have
5 addressed them. I'm sorry.

6 And basically I put our position forward. I do
7 think, Your Honor -- just briefly before I close, I do think
8 that it was his responsibility to accept the consequences of
9 what he did on the date that he was pulled over, and I think
10 he has done that.

11 I think it has been a bone of contention between
12 the United States Attorney and this Court in terms of how
13 far my client was willing to go to accept other relevant
14 conduct, and he has not done that.

15 I have asked the Court to understand that some of
16 the confusion I think that arose was because of that
17 disagreement, or the fact that he didn't realize how much
18 the other things would come into play in terms of what he is
19 facing now.

20 I do understand, and I think he understands, in
21 terms of his actions putting himself in the situation. But
22 what I think that he understood, Your Honor, about relevant
23 conduct that the Court would consider would be his conduct,
24 what he did and his past, what he did to get himself in
25 trouble, but not anything involving any of these other

1 individuals.

2 The threat, I don't think he did understand that.
3 But the Court has made its ruling on that. He is prepared
4 for sentencing.

5 Is there anything you want to say to the Judge?

6 THE COURT: You have a right to talk on your own
7 behalf.

8 THE DEFENDANT: I would like to say I apologize.
9 I apologize to the Court and my family, taking everybody
10 through this ordeal. I would just like to apologize for
11 this whole situation.

12 I do have a son and daughter at home. I don't
13 want to be taken away from their lives for the rest of my
14 life. I do want to share something with them.

15 I just ask I not be sentenced to the maximum, but
16 to the minimum.

17 THE COURT: You do understand that you do have
18 the right to appeal the suppression decision of the Court
19 and any decisions that the Court made on your objections to
20 the presentence report; do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Behe?

23 MR. BEHE: Yes, Your Honor. The sentence called
24 for in this particular case is quite severe, a range of
25 thirty years to life.

1 But I don't see before the Court an individual
2 who is the slightest bit remorseful for his conduct. He is
3 a career offender. He hasn't learned anything from his
4 prior convictions and periods of incarceration and was
5 involved for a substantial period of time in distributing
6 substantial amounts of drugs in our community.

7 Indeed, the amount of drugs that were recovered
8 from the van from his town home during that incident on the
9 24th, the fact that the evidence showed that powder cocaine
10 had been converted into crack cocaine to me indicates an
11 individual who at that time was involved in substantial
12 distribution of controlled substances.

13 There comes a point in time where the community
14 just has to be protected. Congress has determined that when
15 an individual comes before the Court having shown an
16 absolute unwillingness to reform and conform to the laws of
17 the United States and not involve himself in drug
18 trafficking, that the only appropriate thing to do is remove
19 that individual from the community for a substantial period
20 of time.

21 That is what will happen here. I don't think
22 anything beyond the term of imprisonment of 360 months is
23 warranted, but I think a substantial term of imprisonment
24 like that is in fact well deserved.
25

1 THE COURT: AND NOW this 11th day of September,
2 the year 2003, the defendant appearing in court for purposes
3 of sentencing, pursuant to the Sentencing Reform Act of
4 1984, it is the judgment of the Court on Count 2 that the
5 defendant Mari Anthony is hereby committed to the custody of
6 the Bureau of Prisons to be imprisoned for a term of 360
7 months.

8 The Court finds that the defendant has some
9 ability to pay a fine below the guideline range.
10 Accordingly, it is further ordered that the defendant pay to
11 the United States the sum of \$2600.00 consisting of a fine
12 of \$2500.00 and a special assessment of \$100.00.

13 The fine and assessment are due immediately,
14 shall be paid through the Clerk of Court and are payable
15 during the period of incarceration with any balance to be
16 paid within five years of the defendant's release from
17 custody.

18 Upon release from imprisonment, the defendant
19 shall be placed on supervised release for a term of five
20 years.

21 Within 72 hours of release from the custody of
22 the Bureau of Prisons, the defendant shall report in person
23 to the Probation Office in the district to which he is
24 released.

25 While on supervised release, the defendant shall

1 comply with the standard conditions that have been adopted
2 by this Court and with the following additional condition:

3 Defendant shall pay any balance of the fine
4 imposed by this judgment to which remains unpaid at the
5 commencement of the term of supervised release in minimum
6 monthly installments of no less than \$50.00.

7 As a condition of supervision, the defendant
8 shall submit to one drug test within fifteen days of release
9 from custody and at least two periodic drug tests
10 thereafter.

11 The following statement of reasons is placed on
12 the record for the sentence that has been imposed: The
13 Court adopts the factual finding and the guideline
14 application in the presentence report except the Court finds
15 inadequate proof to support paragraph 20 of the presentence
16 report, which is the gun possession.

17 A total offense level is therefore 40, criminal
18 history category of six, with an imprisonment range of 360
19 to life. The fine is below the guideline range because of
20 the defendant's inability to pay. The sentence is within
21 the guideline range, that range exceeds 24 months.

22 The sentence is imposed for the following
23 reasons: A sentence at the bottom of the range would appear
24 to meet the sentencing objectives.

25 Now, Mr. Anthony, you can appeal your conviction

1 if you believe that your guilty plea was somehow unlawful or
2 involuntary, or there is some other fundamental defect in
3 these proceedings that was not waived by your guilty plea.

4 You also have a statutory right to appeal your
5 sentence under certain circumstances, particularly if you
6 think the sentence is contrary to law.

7 You have ten days from this day in which to file
8 a notice of appeal. If you wish to take an appeal and you
9 can no longer afford to retain the services of Mr. Krevsky,
10 the Court on proper application will appoint a Public
11 Defender to take an appeal for you without cost.

12 You may also request the Clerk of Court to
13 prepare and file a notice of appeal on your behalf.

14 Now if he does wish to take an appeal and he
15 cannot afford to retain your services, the Court needs to
16 know as soon as possible so that a PD can be appointed to
17 represent him.

18 MR. KREVSky: I will take care of it.

19 THE COURT: Thank you.

20 MR. BEHE: Your Honor, I ask that the second
21 superseding indictment and the remaining counts of the third
22 superseding indictment be dismissed. I think he pled guilty
23 to Count 2 --

24 THE COURT: Count 2 --

25 MR. BEHE: -- of the third superseding.

1 THE COURT: All other counts are dismissed.

2 THE CLERK: Court is in recess.

3 MR. KREVSKY: Could this be admitted into the
4 record?

5 THE COURT: Yes. Thank you.

6 (Defendant Exhibit 1 was admitted into evidence.)

7 (Whereupon, the proceedings were concluded.)

8
9 I hereby certify that the proceedings and
10 evidence are contained fully and accurately in the notes
11 taken by me on the trial of the above cause, and that this
12 copy is a correct transcript of the same.

13

14

Vicki L. Fox, RMR

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Vicki L. Fox, RMR

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Official Reporter

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